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AMENDED IN ASSEMBLY MAY 22, 2006

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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2511**

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**Introduced by Assembly Member Jones  
(Coauthors: Assembly Members Garcia and Leslie)**

February 23, 2006

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An act to amend Sections 65008, 65400, 65589.5, 65852.1, 65863, and 65950 of, to add Section ~~65801~~ 65582.1 to, and to repeal Section 66037 of, the Government Code, relating to land use.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2511, as amended, Jones. Land use: housing.

(1) The Planning and Zoning Law prohibits a city, county, city and county, and other local governmental agency from prohibiting or discriminating against a residential development or emergency shelter because of specified reasons, including that the development is intended for occupancy by persons or families of low, moderate, or middle income.

This bill would include within this prohibition the intended occupancy by persons or families of very low income.

(2) The Planning and Zoning Law requires the legislative body of each county and city to adopt a comprehensive, long-term general

plan for the physical development of the county or city and of any land outside its boundaries that bears relation to its planning. That law requires this general plan to include several elements, including land use, circulation, housing, open-space, and conservation elements, which are required to meet specified requirements. After the legislative body of a city, county, or city and county adopts all or part of a general plan, the Planning and Zoning Law requires the agency to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes specified information regarding the status of the plan and progress in its implementation. This report is due by April 1 of each year, except for the 2006 calendar year when it is due on October 1.

This bill would require a court to issue an order or judgment compelling compliance with this reporting requirement within 60 days if, upon a motion to that effect, the court finds that a city, county, or city and county failed to timely submit the housing element portion of that report that substantially complies with the applicable requirements. The bill would authorize the court to grant appropriate sanctions and require the court to retain jurisdiction to ensure that its order or judgment is carried out.

(3) The Planning and Zoning Law requires that a local agency not disapprove a housing development project for very low, low-, or moderate-income households or condition its approval in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

The Planning and Zoning Law also requires the court, in an action to enforce these provisions, to issue an order or judgment to compel compliance with these provisions within 60 days if the court finds that the local agency disapproved the project or conditioned its approval without making the required findings or without making sufficient findings supported by substantial evidence, and authorizes the court to issue further orders to ensure that the purposes and policies of these provisions are fulfilled if its order or judgment has not been carried out within the 60-day period.

This bill would provide that these provisions be known and cited as the Housing Accountability Act.

(4) Existing law provides for the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities,

as well as the implementation of general plans. Existing law declares the intent of the Legislature to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.

Existing law makes various findings and declarations regarding the lack of affordable housing and declares that it is the policy of the state that a local government not reject or make infeasible affordable housing developments that contribute to meeting the state housing need without a thorough analysis of the effects of the action.

This bill would state the ~~intent~~ *findings and declarations* of the Legislature ~~that local agencies comply with laws that facilitate development of housing and would list~~ *with respect to* some of the laws that provide incentives to facilitate and expedite the construction of affordable housing.

(5) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for single-family and multifamily residence, as prescribed. It also authorizes a local agency to issue a zoning variance, special use permit, or conditional use permit for a dwelling unit of a specified size to be constructed either attached to or detached from a primary residence on a parcel zoned for a single-family residence if the dwelling unit is intended for the sole occupancy of one adult or 2 adult persons aged 62 years or older.

This bill would repeal this specific authority of a local agency, but would provide that units constructed pursuant to these variances or permits issued before January 1, 2007, are to be considered in compliance with relevant laws, ordinances, rules, and regulations.

(6) The Planning and Zoning Law prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element, and the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city, county, or city and county may reduce the residential density for a parcel if it identifies sufficient additional sites, as prescribed.

This bill would define a lower residential density below which the city, county, or city and county would be required to make the above described written findings.

(7) Existing law requires each city, county, or city and county to ensure that its inventory or programs of adequate sites identified in its housing element can accommodate its share of the regional housing need throughout the planning period and prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density for any parcel to a lower residential density unless the city, county, or city and county makes specified written findings supported by substantial evidence.

This bill would instead require each city, county, or city and county to ensure that its housing element inventory or its housing element program to make those sites available, can accommodate its share of the regional housing need throughout the planning period.

(8) The Permit Streamlining Act within the Planning and Zoning Law requires the lead agency that has the principal responsibility for approving a development project, as defined, to approve or disapprove the project within a specified number of days from the date of certification of an environmental impact report, the date of the adoption of a negative declaration, or the determination by the lead agency that the project is exempt from the California Environmental Quality Act.

This bill would define “development project” with respect to a development project that is affordable to very low or low-income households and for which the project applicant has applied for or will apply for financial assistance from a public agency or federal agency as a use that consists of residential units only or a mixed-use development consisting of residential and less than 50% nonresidential neighborhood commercial use, as defined.

(9) Existing law authorizes the court to invite the parties involved in specified land use actions before the court to consider resolving their dispute by mediation. Actions filed on or after January 1, 2006, are not subject to this provision.

This bill would repeal the provision that makes those actions not subject to the invitation to mediate the dispute.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares the  
2 following:

3     (a) Failure to timely prepare and file an adequate report on a  
4 general plan adopted by a city, county, or city and county before  
5 the mandatory deadlines as required pursuant to Section 65400 of  
6 the Government Code is a violation of law and contrary to the  
7 state housing goal.

8     (b) Preventing governmental delays in processing a permit  
9 application for a development project is an important state  
10 interest. Failure to comply with the mandatory deadlines set forth  
11 in Section 65950 of the Government Code is contrary to the state  
12 housing goal.

13     SEC. 2. Section 65008 of the Government Code is amended  
14 to read:

15     65008. (a) Any action pursuant to this title by any city,  
16 county, city and county, or other local governmental agency in  
17 this state is null and void if it denies to any individual or group of  
18 individuals the enjoyment of residence, landownership, tenancy,  
19 or any other land use in this state because of any of the following  
20 reasons:

21     (1) The race, sex, color, religion, ethnicity, national origin,  
22 ancestry, lawful occupation, familial status, disability, or age of  
23 the individual or group of individuals. For purposes of this  
24 section, both of the following definitions apply:

25     (A) "Familial status" as defined in Section 12955.2.

26     (B) "Disability" as defined in Section 12955.3.

27     (2) The method of financing of any residential development of  
28 the individual or group of individuals.

29     (3) The intended occupancy of any residential development by  
30 persons or families of very low, low, moderate, or middle  
31 income.

32     (b) (1) No city, county, city and county, or other local  
33 governmental agency shall, in the enactment or administration of  
34 ordinances pursuant to any law, including this title, prohibit or  
35 discriminate against any residential development or emergency  
36 shelter for any of the following reasons:

37     (A) Because of the method of financing.

1 (B) Because of the race, sex, color, religion, ethnicity, national  
2 origin, ancestry, lawful occupation, familial status, disability, or  
3 age of the owners or intended occupants of the residential  
4 development or emergency shelter.

5 (C) Because the development or shelter is intended for  
6 occupancy by persons and families of very low, low, or moderate  
7 income, as defined in Section 50093 of the Health and Safety  
8 Code, or persons and families of middle income.

9 (D) Because the development consists of a multifamily  
10 residential project that is consistent with both the jurisdiction's  
11 zoning ordinance and general plan as they existed on the date the  
12 application was deemed complete, except that a project shall not  
13 be deemed to be inconsistent with the zoning designation for the  
14 site if that zoning designation is inconsistent with the general  
15 plan only because the project site has not been rezoned to  
16 conform with a more recently adopted general plan.

17 (2) The discrimination prohibited by this subdivision includes  
18 the denial or conditioning of a residential development or shelter  
19 because, *in whole or in part*, of either of the following:

20 (A) The method of financing.

21 (B) The occupancy of the development by persons protected  
22 by this subdivision, including, but not limited to, persons and  
23 families of very low, low, or moderate income.

24 (c) For the purposes of this section, "persons and families of  
25 middle income" means persons and families whose income does  
26 not exceed 150 percent of the median income for the county in  
27 which the persons or families reside.

28 (d) (1) No city, county, city and county, or other local  
29 governmental agency may impose different requirements on a  
30 residential development or emergency shelter that is subsidized,  
31 financed, insured, or otherwise assisted by the federal or state  
32 government or by a local public entity, as defined in Section  
33 50079 of the Health and Safety Code, than those imposed on  
34 nonassisted developments, except as provided in subdivision (e).  
35 The discrimination prohibited by this subdivision includes the  
36 denial or conditioning of a residential development or shelter  
37 based in whole or in part on the fact that the development is  
38 subsidized, financed, insured, or otherwise assisted as described  
39 in this paragraph.

1 (2) No city, county, city and county, or other local  
2 governmental agency may, because of the race, sex, color,  
3 religion, ethnicity, national origin, ancestry, lawful occupation,  
4 familial status, disability, or age of the intended occupants, or  
5 because the development is intended for occupancy by persons  
6 and families of very low, low, moderate, or middle income,  
7 impose different requirements on these residential developments  
8 than those imposed on developments generally, except as  
9 provided in subdivision (e).

10 (e) Notwithstanding subdivisions (a) to (d), inclusive, this  
11 section and this title do not prohibit either of the following:

12 (1) The County of Riverside from enacting and enforcing  
13 zoning to provide housing for older persons, in accordance with  
14 state or federal law, if that zoning was enacted prior to January 1,  
15 1995.

16 (2) Any city, county, or city and county from extending  
17 preferential treatment to residential developments or emergency  
18 shelters assisted by the federal or state government or by a local  
19 public entity, as defined in Section 50079 of the Health and  
20 Safety Code, or other residential developments or emergency  
21 shelters intended for occupancy by persons and families of low  
22 and moderate income, as defined in Section 50093 of the Health  
23 and Safety Code, or persons and families of middle income, or  
24 agricultural employees, as defined in subdivision (b) of Section  
25 1140.4 of the Labor Code, and their families. This preferential  
26 treatment may include, but need not be limited to, reduction or  
27 waiver of fees or changes in architectural requirements, site  
28 development and property line requirements, building setback  
29 requirements, or vehicle parking requirements that reduce  
30 development costs of these developments.

31 (f) "Residential development," as used in this section, means a  
32 single-family residence or a multifamily residence, including  
33 manufactured homes, as defined in Section 18007 of the Health  
34 and Safety Code.

35 (g) This section shall apply to chartered cities.

36 (h) The Legislature finds and declares that discriminatory  
37 practices that inhibit the development of housing for persons and  
38 families of very low, low, moderate, and middle income, or  
39 emergency shelters for the homeless, are a matter of statewide  
40 concern.

SEC. 3. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

(C) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(b) For the 2006 calendar year, the planning agency may provide the report required pursuant to paragraph (2) of subdivision (a) by October 1, 2006.

(c) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or



judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

*SEC. 4. Section 65582.1 is added to the Government Code, to read:*

*65582.1. The Legislature finds and declares that it has provided incentives to facilitate and expedite the construction of affordable housing. Those incentives can be found in the following provisions:*

*(a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).*

*(b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).*

*(c) Restrictions on disapproval of housing developments (Section 65589.5).*

*(d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).*

*(e) Least cost zoning law (Section 65913.1).*

*(f) Density bonus law (Section 65915).*

*(g) Second dwelling units (Sections 65852.150 and 65852.2).*

*(h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).*

*(i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).*

*(j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).*

1     (k) *Reduced time for action on affordable housing applications*  
2     *under the approval of development permits process (Article 5*  
3     *(commencing with Section 65950) of Chapter 4.5).*

4     (l) *Limiting moratoriums on multifamily housing (Section*  
5     *65858).*

6     (m) *Prohibiting discrimination against affordable housing*  
7     *(Section 65008).*

8     (n) *California Fair Employment and Housing Act (Part 2.8*  
9     *(commencing with Section 12900) of Division 3).*

10    (o) *Community redevelopment law (Part 1 (commencing with*  
11    *Section 33000) of Division 24 of the Health and Safety Code, and*  
12    *in particular Sections 33334.2 and 33413).*

13    ~~SEC. 4.~~

14    SEC. 5. Section 65589.5 of the Government Code is amended  
15    to read:

16    65589.5. (a) The Legislature finds and declares all of the  
17    following:

18    (1) The lack of housing is a critical problem that threatens the  
19    economic, environmental, and social quality of life in California.

20    (2) California housing has become the most expensive in the  
21    nation. The excessive cost of the state's housing supply is  
22    partially caused by activities and policies of many local  
23    governments that limit the approval of housing, increase the cost  
24    of land for housing, and require that high fees and exactions be  
25    paid by producers of housing.

26    (3) Among the consequences of those actions are  
27    discrimination against low-income and minority households, lack  
28    of housing to support employment growth, imbalance in jobs and  
29    housing, reduced mobility, urban sprawl, excessive commuting,  
30    and air quality deterioration.

31    (4) Many local governments do not give adequate attention to  
32    the economic, environmental, and social costs of decisions that  
33    result in disapproval of housing projects, reduction in density of  
34    housing projects, and excessive standards for housing projects.

35    (b) It is the policy of the state that a local government not  
36    reject or make infeasible housing developments that contribute to  
37    meeting the housing need determined pursuant to this article  
38    without a thorough analysis of the economic, social, and  
39    environmental effects of the action and without complying with  
40    subdivision (d).

1 (c) The Legislature also recognizes that premature and  
2 unnecessary development of agricultural lands for urban uses  
3 continues to have adverse effects on the availability of those  
4 lands for food and fiber production and on the economy of the  
5 state. Furthermore, it is the policy of the state that development  
6 should be guided away from prime agricultural lands; therefore,  
7 in implementing this section, local jurisdictions should  
8 encourage, to the maximum extent practicable, in filling existing  
9 urban areas.

10 (d) A local agency shall not disapprove a housing  
11 development project, including farmworker housing as defined in  
12 subdivision (d) of Section 50199.50 of the Health and Safety  
13 Code, for very low, low-, or moderate-income households or  
14 condition approval in a manner that renders the project infeasible  
15 for development for the use of very low, low-, or  
16 moderate-income households, including through the use of  
17 design review standards, unless it makes written findings, based  
18 upon substantial evidence in the record, as to one of the  
19 following:

20 (1) The jurisdiction has adopted a housing element pursuant to  
21 this article that has been revised in accordance with Section  
22 65588, is in substantial compliance with this article, and the  
23 jurisdiction has met or exceeded its share of the regional housing  
24 need allocation pursuant to Section 65584 for the planning period  
25 for the income category proposed for the housing development  
26 project, provided that any disapproval or conditional approval  
27 shall not be based on any of the reasons prohibited by Section  
28 65008. If the housing development project includes a mix of  
29 income categories, and the jurisdiction has not met or exceeded  
30 its share of the regional housing need for one or more of those  
31 categories, then this paragraph shall not be used to disapprove or  
32 conditionally approve the project. The share of the regional  
33 housing need met by the jurisdiction shall be calculated  
34 consistently with the forms and definitions that may be adopted  
35 by the Department of Housing and Community Development  
36 pursuant to Section 65400. Any disapproval or conditional  
37 approval pursuant to this paragraph shall be in accordance with  
38 applicable law, rule, or standards.

39 (2) The development project as proposed would have a  
40 specific, adverse impact upon the public health or safety, and

1 there is no feasible method to satisfactorily mitigate or avoid the  
2 specific adverse impact without rendering the development  
3 unaffordable to low- and moderate-income households. As used  
4 in this paragraph, a “specific, adverse impact” means a  
5 significant, quantifiable, direct, and unavoidable impact, based  
6 on objective, identified written public health or safety standards,  
7 policies, or conditions as they existed on the date the application  
8 was deemed complete. Inconsistency with the zoning ordinance  
9 or general plan land use designation shall not constitute a  
10 specific, adverse impact upon the public health or safety.

11 (3) The denial of the project or imposition of conditions is  
12 required in order to comply with specific state or federal law, and  
13 there is no feasible method to comply without rendering the  
14 development unaffordable to low- and moderate-income  
15 households.

16 (4) The development project is proposed on land zoned for  
17 agriculture or resource preservation that is surrounded on at least  
18 two sides by land being used for agricultural or resource  
19 preservation purposes, or which does not have adequate water or  
20 wastewater facilities to serve the project.

21 (5) The development project is inconsistent with both the  
22 jurisdiction’s zoning ordinance and general plan land use  
23 designation as specified in any element of the general plan as it  
24 existed on the date the application was deemed complete, and the  
25 jurisdiction has adopted a revised housing element in accordance  
26 with Section 65588 that is in substantial compliance with this  
27 article.

28 (A) This paragraph cannot be utilized to disapprove or  
29 conditionally approve a housing development project if the  
30 development project is proposed on a site that is identified as  
31 suitable or available for very low, low-, or moderate-income  
32 households in the jurisdiction’s housing element, and consistent  
33 with the density specified in the housing element, even though it  
34 is inconsistent with both the jurisdiction’s zoning ordinance and  
35 general plan land use designation.

36 (B) If the local agency has failed, in accordance with Section  
37 65583.2, to identify in the inventory of land in its housing  
38 element sites that can be developed for housing within the  
39 planning period and that are sufficient to provide for the  
40 jurisdiction’s share of the regional housing need for all income

1 levels pursuant to Section 65584, then this paragraph shall not be  
2 utilized to disapprove or conditionally approve a housing  
3 development project proposed for a site designated in any  
4 element of the general plan for residential uses or designated in  
5 any element of the general plan for commercial uses if residential  
6 uses are permitted or conditionally permitted within commercial  
7 designations. In any action in court, the burden of proof shall be  
8 on the local agency to show that its housing element does  
9 identify adequate sites with appropriate zoning and development  
10 standards and with services and facilities to accommodate the  
11 local agency's share of the regional housing need for the very  
12 low and low-income categories.

13 (e) This section does not relieve the local agency from  
14 complying with the Congestion Management Program required  
15 by Chapter 2.6 (commencing with Section 65088) of Division 1  
16 of Title 7 or the California Coastal Act (Division 20  
17 (commencing with Section 30000) of the Public Resources  
18 Code). This section also does not relieve the local agency from  
19 making one or more of the findings required pursuant to Section  
20 21081 of the Public Resources Code or otherwise complying  
21 with the California Environmental Quality Act (Division 13  
22 (commencing with Section 21000) of the Public Resources  
23 Code).

24 (f) This section does not prohibit a local agency from requiring  
25 the development project to comply with objective, quantifiable,  
26 written development standards, conditions, and policies  
27 appropriate to, and consistent with, meeting the jurisdiction's  
28 share of the regional housing need pursuant to Section 65584.  
29 However, the development standards, conditions, and policies  
30 shall be applied to facilitate and accommodate development at  
31 the density permitted on the site and proposed by the  
32 development project. This section does not prohibit a local  
33 agency from imposing fees and other exactions otherwise  
34 authorized by law that are essential to provide necessary public  
35 services and facilities to the development project.

36 (g) This section shall be applicable to charter cities because  
37 the Legislature finds that the lack of housing is a critical  
38 statewide problem.

39 (h) The following definitions apply for the purposes of this  
40 section:

1 (1) “Feasible” means capable of being accomplished in a  
2 successful manner within a reasonable period of time, taking into  
3 account economic, environmental, social, and technological  
4 factors.

5 (2) “Housing development project” means a use consisting of  
6 either of the following:

7 (A) Residential units only.

8 (B) Mixed-use developments consisting of residential and  
9 nonresidential uses in which nonresidential uses are limited to  
10 neighborhood commercial uses and to the first floor of buildings  
11 that are two or more stories. As used in this paragraph,  
12 “neighborhood commercial” means small-scale general or  
13 specialty stores that furnish goods and services primarily to  
14 residents of the neighborhood.

15 (3) “Housing for very low, low-, or moderate-income  
16 households” means that either (A) at least 20 percent of the total  
17 units shall be sold or rented to lower income households, as  
18 defined in Section 50079.5 of the Health and Safety Code, or (B)  
19 100 percent of the units shall be sold or rented to  
20 moderate-income households as defined in Section 50093 of the  
21 Health and Safety Code, or middle-income households, as  
22 defined in Section 65008 of this code. Housing units targeted for  
23 lower income households shall be made available at a monthly  
24 housing cost that does not exceed 30 percent of 60 percent of  
25 area median income with adjustments for household size made in  
26 accordance with the adjustment factors on which the lower  
27 income eligibility limits are based. Housing units targeted for  
28 persons and families of moderate income shall be made available  
29 at a monthly housing cost that does not exceed 30 percent of 100  
30 percent of area median income with adjustments for household  
31 size made in accordance with the adjustment factors on which the  
32 moderate-income eligibility limits are based.

33 (4) “Area median income” means area median income as  
34 periodically established by the Department of Housing and  
35 Community Development pursuant to Section 50093 of the  
36 Health and Safety Code. The developer shall provide sufficient  
37 legal commitments to ensure continued availability of units for  
38 very low or low-income households in accordance with the  
39 provisions of this subdivision for 30 years.

1 (5) “Disapprove the development project” includes any  
2 instance in which a local agency does either of the following:

3 (A) Votes on a proposed housing development project  
4 application and the application is disapproved.

5 (B) Fails to comply with the time periods specified in  
6 subparagraph (B) of paragraph (1) of subdivision (a) of Section  
7 65950. An extension of time pursuant to Article 5 (commencing  
8 with Section 65950) shall be deemed to be an extension of time  
9 pursuant to this paragraph.

10 (i) If any city, county, or city and county denies approval or  
11 imposes restrictions, including design changes, a reduction of  
12 allowable densities or the percentage of a lot that may be  
13 occupied by a building or structure under the applicable planning  
14 and zoning in force at the time the application is deemed  
15 complete pursuant to Section 65943, that have a substantial  
16 adverse effect on the viability or affordability of a housing  
17 development for very low, low-, or moderate-income households,  
18 and the denial of the development or the imposition of  
19 restrictions on the development is the subject of a court action  
20 which challenges the denial, then the burden of proof shall be on  
21 the local legislative body to show that its decision is consistent  
22 with the findings as described in subdivision (d) and that the  
23 findings are supported by substantial evidence in the record.

24 (j) When a proposed housing development project complies  
25 with applicable, objective general plan and zoning standards and  
26 criteria, including design review standards, in effect at the time  
27 that the housing development project’s application is determined  
28 to be complete, but the local agency proposes to disapprove the  
29 project or to approve it upon the condition that the project be  
30 developed at a lower density, the local agency shall base its  
31 decision regarding the proposed housing development project  
32 upon written findings supported by substantial evidence on the  
33 record that both of the following conditions exist:

34 (1) The housing development project would have a specific,  
35 adverse impact upon the public health or safety unless the project  
36 is disapproved or approved upon the condition that the project be  
37 developed at a lower density. As used in this paragraph, a  
38 “specific, adverse impact” means a significant, quantifiable,  
39 direct, and unavoidable impact, based on objective, identified

1 written public health or safety standards, policies, or conditions  
2 as they existed on the date the application was deemed complete.

3 (2) There is no feasible method to satisfactorily mitigate or  
4 avoid the adverse impact identified pursuant to paragraph (1),  
5 other than the disapproval of the housing development project or  
6 the approval of the project upon the condition that it be  
7 developed at a lower density.

8 (k) The applicant or any person who would be eligible to  
9 apply for residency in the development may bring an action to  
10 enforce this section. If in any action brought to enforce the  
11 provisions of this section, a court finds that the local agency  
12 disapproved a project or conditioned its approval in a manner  
13 rendering it infeasible for the development of housing for very  
14 low, low-, or moderate-income households, including  
15 farmworker housing, without making the findings required by  
16 this section or without making sufficient findings supported by  
17 substantial evidence, the court shall issue an order or judgment  
18 compelling compliance with this section within 60 days,  
19 including, but not limited to, an order that the local agency take  
20 action on the development project. The court shall retain  
21 jurisdiction to ensure that its order or judgment is carried out and  
22 shall award reasonable attorney's fees and costs of suit to the  
23 plaintiff or petitioner who proposed the housing development,  
24 except under extraordinary circumstances in which the court  
25 finds that awarding fees would not further the purposes of this  
26 section. If the court determines that its order or judgment has not  
27 been carried out within 60 days, the court may issue further  
28 orders as provided by law to ensure that the purposes and policies  
29 of this section are fulfilled, including, but not limited to, an order  
30 to vacate the decision of the local agency, in which case the  
31 application for the project, as constituted at the time the local  
32 agency took the initial action determined to be in violation of this  
33 section, along with any standard conditions determined by the  
34 court to be generally imposed by the local agency on similar  
35 projects, shall be deemed approved unless the applicant consents  
36 to a different decision or action by the local agency.

37 (l) If the court finds that the local agency (1) acted in bad faith  
38 when it disapproved or conditionally approved the housing  
39 development in violation of this section and (2) failed to carry  
40 out the court's order or judgment within 60 days as described in



1 paragraph (k), the court in addition to any other remedies  
2 provided by this section, may impose fines upon the local agency  
3 that the local agency shall be required to deposit into a housing  
4 trust fund. Fines shall not be paid from funds that are already  
5 dedicated for affordable housing, including, but not limited to,  
6 redevelopment or low- and moderate-income housing funds and  
7 federal HOME and CDBG funds. The local agency shall commit  
8 the money in the trust fund within five years for the sole purpose  
9 of financing newly constructed housing units affordable to  
10 extremely low, very low, or low-income households. For  
11 purposes of this section, “bad faith” shall mean an action that is  
12 frivolous or otherwise entirely without merit.

13 (m) Any action brought to enforce the provisions of this  
14 section shall be brought pursuant to Section 1094.5 of the Code  
15 of Civil Procedure, and the local agency shall prepare and certify  
16 the record of proceedings in accordance with subdivision (c) of  
17 Section 1094.6 of the Code of Civil Procedure no later than 30  
18 days after the petition is served, provided that the cost of  
19 preparation of the record shall be borne by the local agency.  
20 Upon entry of the trial court’s order, a party shall, in order to  
21 obtain appellate review of the order, file a petition within 20 days  
22 after service upon it of a written notice of the entry of the order,  
23 or within such further time not exceeding an additional 20 days  
24 as the trial court may for good cause allow. If the local agency  
25 appeals the judgment of the trial court, the local agency shall post  
26 a bond, in an amount to be determined by the court, to the benefit  
27 of the plaintiff if the plaintiff is the project applicant.

28 (n) In any action, the record of the proceedings before the  
29 local agency shall be filed as expeditiously as possible and,  
30 notwithstanding Section 1094.6 of the Code of Civil Procedure  
31 or subdivision (m) of this section, all or part of the record may be  
32 prepared (1) by the petitioner with the petition or petitioner’s  
33 points and authorities, (2) by the respondent with respondent’s  
34 points and authorities, (3) after payment of costs by the  
35 petitioner, or (4) as otherwise directed by the court. If the  
36 expense of preparing the record has been borne by the petitioner  
37 and the petitioner is the prevailing party, the expense shall be  
38 taxable as costs.

39 (o) This section shall be known, and may be cited, as the  
40 Housing Accountability Act.

1     ~~SEC. 5.—Section 65801 is added to the Government Code, to~~  
2     ~~read:~~

3     ~~65801. (a) The Legislature finds and declares that housing is~~  
4     ~~a critical statewide problem that threatens the economic~~  
5     ~~prosperity, environment, and quality of life of California~~  
6     ~~families. The Legislature has provided incentives to facilitate and~~  
7     ~~expedite the construction of affordable housing. Those incentives~~  
8     ~~can be found in the following provisions:~~

9     ~~(1) Housing element law (Article 10.6 (commencing with~~  
10    ~~Section 65580) of Chapter 3).~~

11    ~~(2) Extension of statute of limitations in actions challenging~~  
12    ~~the housing element and brought in support of affordable housing~~  
13    ~~(subdivision (d) of Section 65009).~~

14    ~~(3) Restrictions on disapproval of housing developments~~  
15    ~~(Section 65585.5).~~

16    ~~(4) Priority for affordable housing in the allocation of water~~  
17    ~~and sewer hookups (Section 65589.7).~~

18    ~~(5) Least cost zoning law (Section 65913.1).~~

19    ~~(6) Density bonus law (Section 65915).~~

20    ~~(7) Second dwelling units (Sections 65852.150 and 65852.2).~~

21    ~~(8) By-right housing, in which certain multifamily housing are~~  
22    ~~designated a permitted use (Section 65589.5).~~

23    ~~(9) No-net-loss-in zoning density law limiting downzonings~~  
24    ~~and density reductions (Section 65863).~~

25    ~~(10) Requiring persons who sue to halt affordable housing to~~  
26    ~~pay attorney fees (Section 65914) or post a bond (Section 529.2~~  
27    ~~of the Code of Civil Procedure).~~

28    ~~(11) Reduced time for action on affordable housing~~  
29    ~~applications under the approval of development permits process~~  
30    ~~(Article 5 (commencing with Section 65950) of Chapter 4.5).~~

31    ~~(12) Limiting moratoriums on multifamily housing (Section~~  
32    ~~65858).~~

33    ~~(13) Prohibiting discrimination against affordable housing~~  
34    ~~(Section 65008).~~

35    ~~(14) California Fair Employment and Housing Act (Part 2.8~~  
36    ~~(commencing with Section 12900) of Division 3).~~

37    ~~(15) Community redevelopment law (Part 1 (commencing~~  
38    ~~with Section 33000) of Division 24 of the Health and Safety~~  
39    ~~Code, and in particular Sections 33334.2 and 33413).~~

1     ~~(b) It is the intent of the Legislature that local agencies comply~~  
2     ~~with laws that facilitate development of housing.~~

3     SEC. 6.     Section 65852.1 of the Government Code is  
4     amended to read:

5     65852.1. (a) Notwithstanding Section 65906, any city,  
6     including a charter city, county, or city and county may issue a  
7     zoning variance, special use permit, or conditional use permit for  
8     a dwelling unit to be constructed, or which is attached to or  
9     detached from, a primary residence on a parcel zoned for a  
10    single-family residence, if the dwelling unit is intended for the  
11    sole occupancy of one adult or two adult persons who are 62  
12    years of age or over, and the area of floorspace of the attached  
13    dwelling unit does not exceed 30 percent of the existing living  
14    area or the area of the floorspace of the detached dwelling unit  
15    does not exceed 1,200 square feet.

16    This section shall not be construed to limit the requirements of  
17    Section 65852.2, or the power of local governments to permit  
18    second units.

19    (b) This section shall become inoperative on January 1, 2007,  
20    and shall have no effect thereafter, except that any zoning  
21    variance, special use permit, or conditional use permit issued for  
22    a dwelling unit before January 1, 2007, pursuant to this section  
23    shall remain valid, and a dwelling unit constructed pursuant to  
24    such a zoning variance, special use permit, or conditional use  
25    permit shall be considered in compliance with all relevant laws,  
26    ordinances, rules, and regulations after January 1, 2007.

27    SEC. 7.     Section 65863 of the Government Code is amended  
28    to read:

29    65863. (a) Each city, county, or city and county shall ensure  
30    that its housing element inventory described in paragraph (3) of  
31    subdivision (a) of Section 65583 or its housing element program  
32    to make sites available pursuant to paragraph (1) of subdivision  
33    (c) of Section 65583 can accommodate its share of the regional  
34    housing need pursuant to Section 65584, throughout the planning  
35    period.

36    (b) No city, county, or city and county shall, by administrative,  
37    quasi-judicial, legislative, or other action, reduce, require, or  
38    permit the reduction of the residential density for any parcel to,  
39    or allow development of any parcel at, a lower residential  
40    density, as defined in paragraphs (1), (2), and (3) of subdivision

1 (h), unless the city, county, or city and county makes written  
2 findings supported by substantial evidence of both of the  
3 following:

4 (1) The reduction is consistent with the adopted general plan,  
5 including the housing element.

6 (2) The remaining sites identified in the housing element are  
7 adequate to accommodate the jurisdiction's share of the regional  
8 housing need pursuant to Section 65584.

9 (c) If a reduction in residential density for any parcel would  
10 result in the remaining sites in the housing element not being  
11 adequate to accommodate the jurisdiction's share of the regional  
12 housing need pursuant to Section 65584, the jurisdiction may  
13 reduce the density on that parcel if it identifies sufficient  
14 additional, adequate, and available sites with an equal or greater  
15 residential density in the jurisdiction so that there is no net loss of  
16 residential unit capacity.

17 (d) The requirements of this section shall be in addition to any  
18 other law that may restrict or limit the reduction of residential  
19 density.

20 (e) If a court finds that an action of a city, county, or city and  
21 county is in violation of this section, the court shall award to the  
22 plaintiff or petitioner who proposed the housing development,  
23 reasonable attorney's fees and costs of suit, except under  
24 extraordinary circumstances in which the court finds that  
25 awarding fees would not further the purposes of this section or  
26 the court finds that the action was frivolous. This subdivision  
27 shall remain operative only until January 1, 2007, and as of that  
28 date is no longer operative, unless a later enacted statute that is  
29 enacted before January 1, 2007, deletes or extends that date.

30 (f) This section requires that a city, county, or city and county  
31 be solely responsible for compliance with this section, unless a  
32 project applicant requests in his or her initial application, as  
33 submitted, a density that would result in the remaining sites in  
34 the housing element not being adequate to accommodate the  
35 jurisdiction's share of the regional housing need pursuant to  
36 Section 65584. In that case, the city, county, or city and county  
37 may require the project applicant to comply with this section.  
38 The submission of an application for purposes of this subdivision  
39 does not depend on the application being deemed complete or  
40 being accepted by the city, county, or city and county.

1 (g) This section shall not be construed to apply to parcels that,  
2 prior to January 1, 2003, were either (1) subject to a development  
3 agreement, or (2) parcels for which an application for a  
4 subdivision map had been submitted.

5 (h) For purposes of this section, “lower residential density”  
6 means any of the following:

7 (1) For sites zoned for residential use and identified in the  
8 local jurisdiction’s housing element inventory described in  
9 paragraph (3) of subdivision (a) of Section 65583, a density  
10 below the density used to determine the total housing unit  
11 capacity pursuant to subdivision (c) of Section 65583.2.

12 (2) For sites that have been or shall be rezoned pursuant to the  
13 local jurisdiction’s housing element program described in  
14 paragraph (1) of subdivision (c) of Section 65583, a density  
15 below the density used to determine compliance with that  
16 paragraph in a manner consistent with subdivision (c) of Section  
17 65583.2.

18 (3) For sites zoned for residential use and not identified in the  
19 local jurisdiction’s housing element, a density that is lower than  
20 80 percent of the maximum allowable residential density for that  
21 parcel.

22 SEC. 8. Section 65950 of the Government Code is amended  
23 to read:

24 65950. (a) Any public agency that is the lead agency for a  
25 development project shall approve or disapprove the project  
26 within whichever of the following periods is applicable:

27 (1) One hundred eighty days from the date of certification by  
28 the lead agency of the environmental impact report if an  
29 environmental impact report is prepared pursuant to Section  
30 21100 or 21151 of the Public Resources Code for the  
31 development project.

32 (2) Ninety days from the date of certification by the lead  
33 agency of the environmental impact report if an environmental  
34 impact report is prepared pursuant to Section 21100 or 21151 of  
35 the Public Resources Code for the development project and all of  
36 the following conditions are met:

37 (A) At least 49 percent of the units in the development project  
38 are affordable to very low or low-income households, as defined  
39 by Sections 50105 and 50079.5 of the Health and Safety Code,  
40 respectively. Rents for the lower income units shall be set at an

1 affordable rent, as that term is defined in Section 50053 of the  
2 Health and Safety Code, for at least 30 years. Owner-occupied  
3 units shall be available at an affordable housing cost, as that term  
4 is defined in Section 50052.5 of the Health and Safety Code.

5 (B) Prior to the application being deemed complete for the  
6 development project pursuant to Article 3 (commencing with  
7 Section 65940), the lead agency received written notice from the  
8 project applicant that an application has been made or will be  
9 made for an allocation or commitment of financing, tax credits,  
10 bond authority, or other financial assistance from a public agency  
11 or federal agency, and the notice specifies the financial assistance  
12 that has been applied for or will be applied for and the deadline  
13 for application for that assistance, the requirement that one of the  
14 approvals of the development project by the lead agency is a  
15 prerequisite to the application for or approval of the application  
16 for financial assistance, and that the financial assistance is  
17 necessary for the project to be affordable as required pursuant to  
18 subparagraph (A).

19 (C) There is confirmation that the application has been made  
20 to the public agency or federal agency prior to certification of the  
21 environmental impact report.

22 (3) Sixty days from the date of adoption by the lead agency of  
23 the negative declaration if a negative declaration is completed  
24 and adopted for the development project.

25 (4) Sixty days from the determination by the lead agency that  
26 the project is exempt from the California Environmental Quality  
27 Act (Division 13 (commencing with Section 21000) of the Public  
28 Resources Code) if the project is exempt from the California  
29 Environmental Quality Act.

30 (b) This section does not preclude a project applicant and a  
31 public agency from mutually agreeing in writing to an extension  
32 of any time limit provided by this section pursuant to Section  
33 65957.

34 (c) For purposes of paragraph (2) of subdivision (a),  
35 “development project” means a use consisting of either of the  
36 following:

37 (1) Residential units only.

38 (2) Mixed-use developments consisting of residential and  
39 nonresidential uses in which the nonresidential uses are less than  
40 50 percent of the total square footage of the development and are

1 limited to neighborhood commercial uses and to the first floor of  
2 buildings that are two or more stories. As used in this paragraph,  
3 “neighborhood commercial” means small-scale general or  
4 specialty stores that furnish goods and services primarily to  
5 residents of the neighborhood.

6 (d) For purposes of this section, “lead agency” and “negative  
7 declaration” shall have the same meaning as those terms have in  
8 Sections 21067 and 21064 of the Public Resources Code,  
9 respectively.

10 SEC. 9. Section 66037 of the Government Code is repealed.

O